IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 1ST SEPTEMBER 2006 / 10TH BHADRA 1928

OP.No. 6392 of 2001(J)

PETITIONER:

C.A.KURIAKOSE,
KOYIPURATH HOUSE,
ARUMANNOOR, AYARKUNNAM,
KOTTAYAM.

BY ADV. SRI.K.G.ANIL BABU

RESPONDENTS:
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1. **THE DISTRICT COLLECTOR,**
   KOTTAYAM.

2. **THE TAHSILDAR (R.R.),**
   KOTTAYAM.

3. **THE SALES TAX OFFICER,**
   SALES TAX OFFICE , PALA.

BY GOVERNMENT PLEADER SRI.GEORGEKUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.10492/2001 IN OP. NO.6392/2001

DISMISSED

1.9.2006 **SD/- C.N.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CHELLAN FOR RS.2,00,000/- DT.5.4.95.

EXT.P2:- COPY OF THE CHELLAN FOR RS.3,00,000/- DT.9.5.1995.

EXT.P3:- COPY OF THE FORM 16 NOTICE NO.2465/94 DT.31.5.99 ISSUED BY THE TAHSILDAR FOR SALE OF 2.17.60 ARES OF LAND.

EXT.P4:- COPY OF THE FORM 19 NOTICE B6.24873/94 DT.14.10.99 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 65 OF THE R.R.ACT.

EXT.P5:- COPY OF THE ORDER B6.24973/94 DT.14.10.99 ISSUED BY THE 1ST RESPONDENT.

EXT.P6:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN OP. NO.26698/99 DT.27.10.99.

EXT.P7:- COPY OF THE CHELLAN DT.30.8.2000 FOR RS.5,97,984/-.

EXT.P8:- COPY OF THE NOTICE NO.B6-38452/2000 DT.7.11.2000 ISSUED BY THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE NOTICE NO.47453/2000/B4 DT.25.1.2001 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 65 OF THE R.R.ACT./

EXT.P10:- COPY OF THE PROCEEDINGS NO.B4-47453/2000DT.25.1.2000 OF THE 1ST RESPONDENT ISSUED ALONGWITH EXT.P9.

EXT.P11:- COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DT.22.2.2001.

/TRUE COPY/

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C.N.RAMACHANDRAN NAIR,J.

O.P.NO. 6392 OF 2001

Dated this the 1st day of September, 2006

JUDGMENT

Heard counsel for the petitioner and Government Pleader. Even though petitioner claims that abkari dues are settled under the Amnesty Scheme vide Ext.P7 receipt and arrears of sales tax settled from out of Rs. 7 lakhs deposited in Sub Court, Kottayam, Government Pleader referred to the counter affidavit wherein details of adjustments are completely given. Petitioner was in arrears of Rs. 10,25,178/- towards abkari dues, of Rs. 8,75,800/- towards sales tax dues from 1993-94 onwards. Interest payable under the Abkari Act is 18% and under the Sales Tax Act 2% per month, which is 24% per annum. Even though petitioner has made payment of Rs. 5,97,984/- under the Amnesty Scheme towards abkari arrears and Rs. 7 lakhs towards sales tax arrears, he deposited in court a further sum of Rs. 44,184/- towards balance of kist under the Amnesty Scheme and Rs. 34,395/- is recovered by sale of movables in recovery proceedings. The total payment does not account of actual arrears of excise duty and sales tax,

even though much of the outstanding amount as on the date of filing of counter affidavit is above Rs. 21 lakhs, that is four years back. Petitioner was in fact once arrested in proceedings initiated under Section 65 of the RR Act as he was leading an affluent life even after incurring huge arrears of tax. If the petitioner is leading affluent life, then of course it gives rise to a presumption that petitioner has means to make payment and he is deliberately defaulting payment. Section 65 proceedings can therefore be initiated against the petitioner. Though he was once released under orders of this Court on petition filed by his wife, I feel, having regard to the fact that petitioner has made substantial payment, one more opportunity can be granted to the petitioner to clear the abkari arrears under the Amnesty Scheme earlier granted and sales taxdues under the Amnesty Scheme 2002, provided petitioner clears the entire balance arrears of kist and sales tax arrears if not already paid on or before 31.1.2007. There will be direction to the Tahsildar to rework statutory interest in respect of both the abkari dues and sales tax dues and grant 75% reduction in abkari interest and 40% reduction in sales tax interest, consistent with the Amnesty

Scheme above referred and give a statement to the petitioner within ten days from the date of production of a copy of this judgment by the petitioner. If the petitioner commits default in payment as above, the waiver of interest granted by this Court will stand automatically vacated and the revenue authorities are free to proceed for sale of properties, if any, left and if the petitioner is found to be leading affluent life as stated in the counter affidavit to draw presumption of concealed wealth and income and proceed for his arrest. Payments made after filing of the O.P. should also be credited after granting rebates as above.

O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge